

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 3RD JUDICIAL CIRCUIT
WAYNE COUNTY

HON. KWAME M. KILPATRICK,

Case No. 08-122051-CZ

Plaintiff,

HON. ROBERT L. ZIOLKOWSKI

v.

08-122051-CZ 8/28/2008

JDG: ROBERT L ZIOLKOWSKI
KILPATRICK KWAME M HON
VS
GRANHOLM JENNIFER M HON

HON. JENNIFER M. GRANHOLM, in her
official capacity as Governor of the State of
Michigan,

Defendant.

James C. Thomas (P23801)
Attorney for Plaintiff

Kelly G. Keenan (P36129)
John C. Wernet (P31037)
Attorneys for Defendant Governor
Office of Legal Counsel
Office of the Governor

GOVERNOR'S MOTION TO STRIKE AFFIDAVIT OF JAMES C. THOMAS

Defendant, by counsel, under MCR 2.115(B), moves the Court to enter an order striking from the record in this case the August 28, 2008 affidavit of James C. Thomas, based upon the following grounds:

1. The affidavit primarily consists of broad generalizations and conclusory allegations, including the following: "the allegations which are contained within the body of the complaint are factual and correct"; "the contents of Paragraphs of (sic) 15 and 16 of the

Complaint” as reflecting “the events as they occurred”; “those paragraphs reflect a sufficient basis upon which a reasonable person could believe that there is in fact a pre-disposition”; and “the procedures which have been dictated by the Governor’s office for the hearing” as not allowing for meaningful cross-examination, and the ability to compel witnesses.”

[Affidavit of James C. Thomas, ¶¶ 2-5]. As such, the Thomas affidavit does not appear to be based on personal knowledge and fails to state with particularity facts admissible as evidence, as required by MCR 2.119(B)(1)(a) and MCR 2.119(B)(1)(b).

2. The affidavit relies largely on paragraph 16 of Plaintiff’s complaint, which references and quotes various news media reports that, in turn, purportedly reference statements made by Governor Granholm. As such, the affidavit relies upon hearsay statements and is not admissible in the form and manner presented to this Court.

3. The affidavit fails to show affirmatively that the affiant, if sworn as a witness, can testify competently to the facts stated in the affidavit, as required by MCR 2.119(B)(1)(c).

4. The affidavit that was served on Defendant was unsigned and therefore was submitted in violation of MCR 2.114(C)(1), which requires that “[e]very document of a party represented by an attorney shall be signed by at least one attorney of record.”


CONCLUSION

WHEREFORE, the Governor respectfully asks this Court to strike the affidavit of James C. Thomas from the record in this matter pursuant to MCR 2.115(B) as it was not drawn in

conformity with MCR 2.119(B)(1)(a), MCR 2.119(B)(1)(b), MCR 2.119(B)(1)(c), and MCR 2.114(C)(1).

Respectfully submitted,

Kelly G. Keenan
Legal Counsel



John Wernet
Deputy Legal Counsel
Office of the Governor
P.O. Box 30013
111 South Capitol Avenue
Lansing, Michigan
517-335-6847

Dated: September 2, 2008

PROOF OF SERVICE

The undersigned certifies that a copy of the above document was personally served upon the attorneys of record in the above cause, on the 2nd day of September, 2008.